

Hyer



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Signal Corporation--Reconsideration

File: B-240450.2

Date: September 19, 1990

R.H. Mody for the protester.

Roger H. Ayer, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

General Accounting Office (GAO) affirms prior dismissal based on the determination that the protester was not an interested party entitled to protest under GAO Bid Protest Regulations, where the protester knowingly took itself out of the competition by disbanding its proposal team prior to filing its protest and disclaiming any interest in the award.

DECISION

Signal Corporation requests reconsideration of our dismissal of its protest of the decision of the National Institute of Allergy and Infectious Diseases, Department of Health and Human Services (HHS), to exclude Signal's proposal from the competitive range, under request for proposals No. NIAID-DAIDS-90-26. We dismissed Signal's protest in Signal Corp., B-240450, Aug. 8, 1990, 69 Comp. Gen. _____, 90-2 CPD ¶ _____, because it was not an interested party entitled to protest under our Bid Protest Regulations. 31 U.S.C. § 3551(2) (1988); 4 C.F.R. § 21.0(a) (1990).

We affirm our prior dismissal.

Signal alleged that in its protest the agency had erroneously excluded it from the competitive range because of (1) weaknesses related to factors that were not specified in the solicitation, and (2) factual errors committed by the evaluation committee. Signal stated in its protest letter that:

"Because of the [HHS] errors, the Signal team has been disbanded. We have found it necessary to

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release our Principal Investigator, . . . and our teammate, A&T Inc., from their commitments. Consequently, it would serve no useful purpose to request that our proposal be reevaluated, or that Signal be restored to the competitive range since we would be unable to conduct effective discussions. Therefore, Signal Corporation hereby requests that GAO direct the [HHS] to reimburse Signal Corporation for the costs of preparing this protest, and for our bid and proposal preparation in accordance with [Federal Acquisition Regulation] FAR 33.104(h)."

We understood this to mean that Signal had voluntarily released its proposed team and unequivocally rejected any corrective action involving Signal's reinstatement in the competition, or acceptance of contract award in the event its protest was sustained. We therefore dismissed Signal's protest because Signal was not an interested party under our Bid Protest Regulations, that is, it was not considered an "actual or prospective bidder or offeror whose direct economic interest would be effected by the award of the contract or by failure to award the contract." Id.

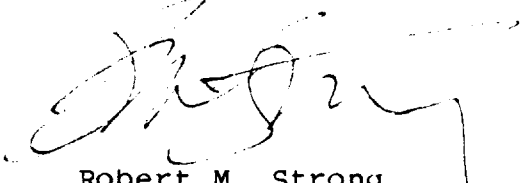
Signal requests that we reverse our dismissal. The crux of its argument is that it did not voluntarily release its team and there was no basis in the record before us to conclude otherwise. Signal states that its principal investigator terminated her contingency employment agreement with Signal following an HHS debriefing conducted before Signal protested to our Office and that her withdrawal made "it necessary to release" both her and A&T. Signal urges that the agency's erroneous evaluation of Signal's proposal caused the principal investigator's departure, and that Signal's proposed effort could not proceed without her. Signal contends that it is an interested party because it was an actual offeror whose direct economic interest was affected by the award or non-award of the contract until the agency action effectively caused its team to disband.

Signal concedes that it did not request award or reinstatement in the competition because it disbanded its team prior to filing the protest. Signal only disagrees with our characterization of its withdrawal from the competition as voluntary. However, whether or not Signal considers its withdrawal from the competition to be voluntary, it was Signal's business decision to release its team from their commitments and claim no further interest in the award.

Signal has not explained why it did not consider finding a replacement for the released principal investigator. In any event, by its own actions, Signal knowingly removed itself from the competition prior to filing its protest, and affirmatively relinquished any chance of receiving the contract. Under the circumstances, we find that Signal ceased to be an actual offeror whose direct economic interest would be affected by the award or failure to award the contract. In other words, Signal's decision to not pursue award of the contract caused it to lose its status as an interested party eligible to protest the agency's actions.

We note that our decision is consistent with the views of the Court of Appeals for the Federal Circuit, which recently interpreted the identical definition of "interested party" for purposes of protests before the General Services Administration Board of Contract Appeals. That court held that a party who knowingly disavows an award prior to filing its protest is not an interested party entitled to protest a procurement action. Federal Data Corp. v. United States, No. 89-1280 (Fed. Cir. Aug. 9, 1990).

The dismissal is affirmed.



Robert M. Strong
Associate General Counsel